



US Army Corps
of Engineers
Honolulu District

Public Notice

Regulatory Branch (CEPOH-EC-R)
Building 230
Fort Shafter, Hawaii 96858-5440

Public Notice Date: 12 August 2011

Permit File Number: GP 2011-001

SPECIAL PUBLIC NOTICE GENERAL PERMIT 2011-001 FOR MAINTENANCE CLEARING OF RIVERS, STREAMS, STORM DRAINS AND BEACH AREAS IN THE STATE OF HAWAII

1. Interested parties are hereby notified that, under authority of Section 10 of the Rivers and Harbors Act of 1899, a general permit authorizing maintenance clearing of rivers, streams, storm drains, and beach areas in water of the United States, including navigable waters in the State of Hawaii, is being issued to the general public, groups, and agencies, effective this date. This permit is not issued under authority of Section 404 of the Clean Water Act as it does not authorize any sidecasting of the removed materials, any discharge of dredged or fill material, nor any return water from authorized work into a water of the U.S.
2. A copy of the general permit is attached. Please note the excluded areas and the limitations and conditions on work to be authorized by GP 2011-001. The general permit became effective on August 8, 2011 and expires in five years on August 8, 2016.
3. A public notice announcing the proposed general permit was issued on November 8, 2010. The notice listed the proposed limitations and conditions of the general permit and invited public comment from interested parties.
4. All appropriate comments received in response to the public notice were incorporated into the general permit and addressed when the permit and the Statement of Findings to support issuance of the permit were prepared.
5. The Corps received a concurrence with our Coastal Zone Management (CZM) program consistency determination covering projects authorized by GP 2011-001 on January 3, 2011, reserving the right to require individual federal consistency reviews whenever CZM determines that an activity may adversely affect coastal resources or uses. This requires the applicant to provide the CZM Program a copy of their notification per Condition No. 9 of the attached permit.
6. Further information may be obtained by writing to the address at the top of this notice, or by telephone (808) 438-9258.

Regulatory Branch

Effective Date: 8 August 2011

Expiration Date: 8 August 2016

DEPARTMENT OF THE ARMY

GENERAL PERMIT GP 2011-001

**MAINTENANCE CLEARING OF RIVERS, STREAMS,
STORM DRAINS, AND BEACH AREAS IN THE STATE OF HAWAII**

1. INTRODUCTION:

In accordance with Parts 320, 322, 325, 326 and 329 of Title 33, Code of Federal Regulations, the District Engineer of the U.S. Army Corps of Engineers, Honolulu District (Corps) has determined that general permit GP 2011-001 should be issued to authorize maintenance clearing of rivers, streams, and storm drains, and beach areas in waters of the United States, including navigable waters in the State of Hawaii, subject to the specifications and limitations specified below. Authorizations are made pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403). This general permit does not authorize any filling activities or maintenance clearing projects when the Corps determines that the public interest requires regulation through an individual permit, nor may this general permit be used to authorize excavation or dredging for the sole purpose of restoring navigation depth for vessels. This general permit replaces GP 96-001.

2. APPLICABLE AREAS:

This general permit applies to waters of the United States, including navigable waters of the United States in main Hawaiian Islands in the State of Hawaii, **except** for the following excluded areas or locations:

- a. Maintenance clearing in areas of recognized biological importance. These include, but are not limited to, coral reefs, endangered species habitat, areas of harvested or concentrated shellfish production, fish spawning grounds, migratory waterfowl breeding areas, coastal wetlands, mudflats, vegetated shallows, and riffle and pool complexes;
- b. Maintenance clearing that would have more than a minimal adverse effect on any species listed or proposed for listing as threatened or endangered or that would result in significant adverse impacts to an area designated, or proposed for designation, as critical habitat for threatened or endangered species, as identified under the Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.) or as recognized by the State of Hawaii Department of Land and Natural Resources (See Special Conditions below required to ensure compliance with the ESA);
- c. Maintenance clearing in waterways designated as impaired under the current List of Impaired Waters in Hawaii prepared under Clean Water Act Section 303(d) or any area where contamination is known or suspected. The listing can be found at the following URL:
http://hawaii.gov/health/environmental/envplanning/wqm/2006_Integrated_Report/2006_Integrated_Report.pdf;

- d. Within close proximity to a public water supply intake, or prime groundwater recharge area;
- e. Within or adjacent to any stream or waterbody included, or proposed for future inclusion, in a Federal or State Wild and Scenic River system or any designated, or proposed to be designated as, an American Heritage River;
- f. In any area upstream or within the boundaries of a wildlife refuge, sanctuary, game management area, or similar facility without written approval by the manager of the facility.
- g. Within the Area of Potential Effect of any historic property listed, or eligible for listing, in the National Register of Historic Places, unless the State Historic Preservation Officer, Office of Hawaiian Affairs, and Hui Malama I Na Kupuna `O Hawai`i Nei has been afforded an opportunity to comment on the impacts of the proposed activity and determined that there will be no effect on the known or designated historic and/or traditional or cultural property.

3. SPECIFICATIONS AND LIMITATIONS OF AUTHORIZED WORK:

- a. The maintenance clearing of river and stream mouths and channels, storm drains or similar structures, or beach areas by general public, groups, and public agencies is authorized by the general permit, including the following activities:
 - (1) Removal of siltation shoals, sand plugs, excessive vegetation and debris, by mechanical means, to restore flow capacities and reduce flooding or other public safety hazards;
 - (2) Removal of seaweed, rubble or other debris from beach areas to provide safer, more reliable recreation of the beaches;
- b. Work performed under this general permit is subject to the following limitations:
 - (1) Maintenance clearing of river and stream mouths and storm drains and removal of seaweed, rubble or other debris from beach areas shall not extend more than 50 feet seaward of the Mean High Water (MHW) line;
 - (2) No blasting, new dredging, or dredging that changes the character, scope, or elevation of the original contour, or that previously authorized, shall be permitted under the general permit. If information on the original contour is not available, applicant will indicate the extent or depth of the proposed work in their request for authorization.
 - (3) Maintenance clearing activities shall be conducted only during periods of low flow and little or no rainfall, except in emergencies where there is imminent threat to life and/or property.

4. CONDITIONS OF THE REGIONAL GENERAL PERMIT:

All projects authorized by this general permit are subject to the following conditions:

a. Procedures for Work Authorization:

(1) All agencies, groups, and individuals planning to perform work under this general permit shall notify the Corps of their intent to complete work under authority of this permit and shall furnish sufficient information to establish location, extent and character of the work;

(2) If the proposed work is authorized under GP 2011-001, the Corps will provide written notification to the applicant that the work may proceed under the general permit. **No work may commence prior to receiving this notification.**

b. The following information and documents shall be submitted to the Corps:

(1) Applicant name, mailing address, and the name and contact information, i.e., telephone and email address of the individual responsible for adherence to permit conditions;

(2) Plans that include exact location, latitude and longitude, vicinity and plan maps, profile and cross-sectional views including existing conditions, pre-sedimentation and/or proposed post construction conditions, all in 8.5" x 11" format, with notations legible for reproduction;

(3) Any available historical data regarding original depths and extents of areas to be cleared;

(4) Description of the source, type, composition, and quantity of material to be cleared, the method and equipment to be used in the clearing operation, the site plans for disposal of excess excavated material, and de-watering plans;

(5) Date activity is expected to commence, expected duration of the proposed work, and date activity is expected to be completed;

(6) Site specific Best Management Practices Plan and appropriate monitoring plan to demonstrate that the proposed activity will be conducted in a manner that complies with all conditions specified in GP 2011-001;

(7) Name of contractor/company and person(s) doing the work, if known;

(8) A statement that the applicant has contacted the State Historic Preservation Officer, Office of Hawaiian Affairs, and Hui Malama I Na Kupuna `O Hawai'i Nei, at least 20 days prior to the commencement of the proposed work, regarding the presence, absence, or likelihood that designated/potential historic properties and/or traditional or cultural properties are in the permit area which may be affected by the proposed project. The statement should include the available information, response and comments, if any, provided by that agency or organization.

(9) A dated copy of notification to the State of Hawaii, Department of Business, Economic Development & Tourism (DBEDT) of their intent to seek authorization for a Department of the Army (DA) permit under GP 2011-001 for the proposed activities. The notification should clearly indicate that the DBEDT has had a minimum of 20 days to review the proposed work to ensure compliance with the Coastal Zone Management Act (CZMA). Provide a copy of any DBEDT response and comments to the notification.

c. General Conditions:

The following general conditions apply to all activities authorized under this general permit:

(1) The permittee shall make every reasonable effort to execute the work authorized by General Permit GP 2011-001 in a manner so as to minimize any adverse impact of the work on fish, wildlife and natural environmental values;

(2) The permittee must allow representative(s) from the Corps to make periodic inspection at any time deemed necessary to ensure that the activity being performed under authority of this permit is in compliance with the terms and conditions of this permit;

(3) If the property associated with an authorized project is sold or transferred to a third party, the original permittee shall obtain the transferee's written agreement to comply with all terms and conditions of this permit. A copy must be forwarded to the Corps to validate the transfer of authorization;

(4) This permit does not grant any property rights or any exclusive privileges nor does it authorize any injury to property or rights of others.

(5) This permit does not obviate the need to obtain other Federal, State, or local approvals required by law;

(6) Discharges associated with activities authorized under this GP may also be regulated under National Pollutant Discharge Elimination System (NPDES) permitting requirements authorized under Section 402 of the Clean Water Act and managed by the State of Hawaii, Department of Health, Clean Water Branch (DOH-CWB). It shall be the permittee's responsibility to consult with the DOH-CWB at (808) 586-4309 on potential NPDES permitting requirements and to obtain the applicable NPDES permit(s) prior to initiating the activity;

(7) Permitted maintenance clearing activities must not preclude the use of public right-of-way including, but not limited to, continuous lateral access along the shoreline. Temporary provisions, e.g. detours, shall be made to maintain public access during clearing operations;

(8) This permit does not authorize interference with any existing or proposed Federal project;

(9) In issuing authorization under General Permit GP 2011-001, the Federal Government assumes no liability for the following:

(a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;

(b) Damages to the permitted project or uses thereof as a result of current or future operations undertaken by, or on behalf of, the United States in the public interest;

(c) Damages to persons, property, or to other permitted or unpermitted activities authorized by General Permit GP 2011-001;

(d) Damage claims associated with any future modification, suspension, or revocation of General Permit GP 2011-001 or any individual authorization issued by the Corps;

(10) In determining if an individual project can be authorized by this general permit, the Corps will rely on information and data provided by the applicant in connection with the request for work authorization. If such information or data prove to be false, incomplete or inaccurate, the authorization may be modified, suspended or revoked, in whole or in part;

(11) This general permit may be modified suspended, or revoked in whole or in part, if it is determined that the individual or cumulative impacts of the authorized work are contrary to the public interest. The authorization for an individual project may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the Corps that the project is contrary to the public interest. Any modification, suspension or revocation of the permit shall follow procedures identified in 33 CFR 325.7;

(12) The permittee shall notify the District Engineer of the permittee's intent to proceed with the authorized activity at least 72 hours prior to the date that the authorized activity will commence and of the completion of the authorized activity no later than fourteen (14) calendar days from the date of its completion;

(13) If an individual activity authorized by this general permit is not completed within two years of authorization (the Notice of Authorization will specify expiration date) the authorization, if not previously modified, revoked, or specifically extended, will automatically expire. The permittee may request, in writing, an extension not to exceed an additional two years from the expiration date specified in the original Notice of Authorization. Such a request must be submitted to the Corps within two months of the original expiration date and contain specific reason(s) for the additional time requirement. Failure to submit such an extension request within that time will result in the requirement to submit a new request for authorization under GP 2011-001;

(14) The permitted activity shall not interfere with the public's right to free navigation on all navigable waters of the United States;

(15) If during construction or operation of the authorized activity, the permittee discovers a previously unknown historic property, all work shall immediately cease and the Corps shall immediately be notified. The Corps will initiate the Federal and State coordination to determine the appropriate notification and consultation requirements and to identify appropriate remedial/preservation actions. Based on the circumstances of the public interest, which may include

the opinion of the State Historic Preservation Officer, the Office of Hawaiian Affairs, Hui Malama I Na Kupuna `O Hawai'i Nei, and any Native Hawaiian group or individual, the Corps may re-evaluate the individual authorization under this general permit. Further work may not proceed until written notification is received from the Corps.

d. Special Conditions:

The following special conditions apply to all activities authorized under this general permit:

- (1) The permittee should make every effort to develop and implement a plan spanning the length of the GP which schedules conducting anticipated work at streams and storm-drains during the dry season, and anticipated work at beach areas during non-swell season. Work should be ceased and re-scheduled in the event of an out-of-season heavy rainfall or swell;
- (2) Use of bulldozers, which result in a discharge to waters of the U.S. is prohibited under this GP;
- (3) Avoid conducting maintenance activities that will lead to mid- and long-term destabilization and exposure of bare sediment/sand along stream banks, stream bed and beaches;
- (4) Determine via surveys or available literature whether coral and/or seagrass beds are present in, or downstream of, areas where the activities will be conducted prior to starting the authorized activities. Where coral and seagrass is present directly in, or adjacent to, the authorized work area, limit the extent of in-water work by conducting the work from land and/or limiting the footprint of the work/dredge area;
- (5) No debris, petroleum projects, or deleterious materials or wastes shall be allowed to fall, flow, leach, or otherwise enter any waters of the United States;
- (6) All authorized activities shall be done in a manner so as to confine and isolate the construction activity and to control and minimize turbidity. Silt curtains or other appropriate and effective silt containment devices approved by the Corps shall be used to minimize turbidity and shall be properly maintained throughout the entire period of in-water work to prevent the discharge of any material to the downstream aquatic habitat. All sediment control devices installed as BMPs (i.e., fabric sandbags, silt curtains/screens, etc.) downstream or makai of the authorized work shall remain in place until the in-water work is completed and will be removed in their entirety and disposed of at an appropriate upland location once the water quality of the affected area has returned to its pre-construction condition;
- (7) Return flow or runoff from upland dewatering site(s)/disposal site(s) shall be contained on land and shall not be allowed to discharge and/or re-enter any waters of the U.S.;
- (8) No sidecasting or stockpiling of excavated materials is authorized. All excavated materials shall be placed above the high tide line (in coastal areas), above the ordinary high water mark at all other waters of the U.S., or disposed of in an upland location. The permittee shall demonstrate that there is no reasonable expectation that disposal locations adjacent to high tide lines on the ocean,

or in floodplains adjacent to other rivers or streams, would result in the material being eroded into the nearby waterbody by high tides and/or flood events;

(9) Warning signs shall be properly deployed and maintained until the portion of the in-water work is completed and the affected area water quality has returned to its pre-construction condition and turbidity control devices have been removed from the waterway;

(10) Fueling, repair, and other activities with any potential to release pollutants will occur in a location whereas there is no potential that spills would have an effect on waters of the U.S.;

(11) If a visible plume and/or floating petroleum products are observed outside of the containment area, the following measures shall be taken:

(a) All in-water work shall stop;

(b) The permittee or contractor shall inform the Corps immediately and the Corps will consult with appropriate agencies;

(c) The site shall be inspected by the permittee to ascertain the source of the plume;

(d) Control measures shall be refurbished, modified, and/or improved, e.g., additional silt containment devices will be installed, as necessary to ensure the integrity of the containment area;

(e) Work shall not continue until after the plume or oil sheen is no longer visible.

(12) An individual, designated responsible for environmental monitoring, will be on-site during clearing operations. This individual will conduct visual inspections, perform water quality sampling and other environmental monitoring, as appropriate, and report all results to the Corps on a regular basis during construction;

(13) When the Corps is notified that an authorized activity is detrimental to fish and wildlife resources, the Corps will issue a suspension order until all pertinent issues have been satisfactorily resolved. The permittee shall comply with any Corps-directed remedial measures deemed necessary to mitigate or eliminate the adverse effect;

(14) Unless terminated earlier, the expiration date of this general permit will be five years from the date of issuance. At that time, there will be a re-evaluation and review of the environmental effects of the activities authorized under the general permit. The re-evaluation will incorporate the views of federal, state, and local agencies and the public following issuance of a new public notice. This general permit may be reissued, revised, or revoked, as appropriate. Individual projects authorized under this permit, but not completed prior to the expiration date of the general permit, may proceed in accordance with the terms and conditions of this permit, regardless of the outcome of the re-evaluation and review.

Endangered Species Act Special Conditions

(1) The permittee shall grant the U.S. Army Corps of Engineers (the Corps) a right of reasonable access to monitor compliance with and the effectiveness of permit conditions.

(2) The permittee shall inform the Corps and NOAA National Marine Fisheries Service, Pacific Islands Regional Office, Protected Resource Division (NMFS PRD) each interaction with a species listed under the Endangered Species Act (ESA) (ESA-listed species) and shall include information on the disposition of any ESA-listed species that is injured or killed.

(3) In the event that work authorized under this GP results in a “take” of an ESA listed species, as defined by the Endangered Species Act, that “take” must be reported to the Corps, and all work shall stop until the Corps, after consultation with NMFS PRD, notifies the permittee that the authorized work may resume. (The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct).

(4) Constant vigilance shall be kept for the presence of ESA-listed species during all phases of the authorized work.

a) A responsible party, i.e., permittee/site manager/project supervisor, shall designate a competent observer to survey work sites and the areas adjacent to the authorized work area for ESA-listed species;

b) Surveys shall be made prior to the start of work each day, including prior to resumption of work following any break of more than one half hour. Periodic additional surveys throughout the work day are strongly recommended;

c) All in-water work will be postponed or halted when ESA-listed species are within 50 yards of the authorized work and will only begin/resume after the animals have voluntarily departed the area, with the following exception: if ESA-listed species are noticed within 50 yards of the authorized work after work has already begun, that work may continue only if, in the best judgment of the responsible party, the activity is unlikely disturb or harm the animal(s), for example, divers performing surveys or underwater work (excluding the use of toxic chemicals) is likely safe, the use of heavy machinery is not; and

d) No one shall attempt to feed, touch, ride, or otherwise intentionally interact with any ESA-listed species.

(5) Project footprints shall be limited to the minimum area necessary to complete the authorized work.

(6) The project area shall be flagged to identify sensitive resource areas, such as seagrass beds, ESA-listed terrestrial plants, and turtle nests.

(7) The authorized work shall be timed to minimize effects on ESA-listed species and their habitats.

(8) The authorized work shall cease under unusual conditions, such as large tidal events and high surf conditions, except for efforts to avoid or minimize damage to aquatic resources.

(9) A pollution and erosion control plan for the authorized work site and adjacent areas shall be prepared and carried out. At a minimum, this plan shall include and require:

a.) Proper installation and maintenance of silt fences, saucages, equipment diapers, and/or drippans;

b.) A contingency plan to control and clean spilled petroleum products and other toxic materials;

c.) Appropriate materials to contain and clean potential spills will be stored at the work site, and be readily available;

d.) All project-related materials and equipment placed in the water will be free of pollutants;

e.) Daily pre-work inspections of heavy equipment for cleanliness and leaks, with all heavy equipment operations postponed or halted until leaks are repaired and equipment is cleaned;

f.) Fueling of project-related vehicles and equipment will take place at least 50 feet away from the water, preferably over an impervious surface;

g.) A plan to prevent trash and debris from entering the marine environment during the project; and

h.) All construction discharge water (e.g., concrete washout, pumping for work area isolation, vehicle wash water, drilling fluids) must be treated before discharge.

(10) Any necessary and appropriate erosion controls shall be properly installed before undertaking the authorized work.

(11) All disturbed areas must be immediately stabilized following cessation of activities for any break in work longer than 4 days.

(12) For any equipment used in undertaking the authorized work, the 160 dB and 120 dB isopleths shall not exceed the 50 yard shut-down range for impulsive and continuous sound sources, respectively.

(13) Maintenance dredging and in-water excavation shall not be undertaken if any ESA-listed species is within 50 yards of the authorized work, and those operations shall immediately shut-down if an ESA-listed species enters within 50 yards of the authorized work.

This general permit will become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

A handwritten signature in black ink, appearing to read 'D. B. Guttormsen', with a stylized flourish at the end.

Douglas B. Guttormsen, P.E.
Lieutenant Colonel, U.S. Army
District Engineer